

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14798, of Ali and Farideh Nademin, pursuant to 11 DCMR 3107.2, for a variance from the minimum lot area requirements (Sub-section 401.3), a variance from the rear yard requirements (Sub-section 404.1), a variance to allow a subdivision to create a record lot that does not meet the minimum lot area requirements (Sub-section 101.6), and a variance to create a record lot without the required street frontage (Sub-section 401.6) to allow a proposed subdivision and construction of a single-family dwelling in an R-1-B District at premises 5039 Weaver Terrace, N.W., (Square E-1437, Lot 26).

HEARING DATE: May 25, 1988
DECISION DATE: June 1, 1988

FINDINGS OF FACT:

1. The subject site is located on the west side of Weaver Terrace, N.W. in Square E-1437 which is bounded by Weaver Terrace, Cathedral Avenue, Klinge Road and 51st Place, N.W. It comprises Lot 26 at the intersection of Weaver Terrace and Cathedral Avenue, N.W. and is known as premises 5039 Weaver Terrace, N.W.

2. The subject lot is located in an R-1-B Zoning District. It is improved with a single family detached dwelling that was built in 1926. The lot fronts on Weaver Terrace. The structure is located near the rear on the northern half of the lot.

3. The surrounding area is a residential neighborhood characterized by houses of varying sizes interspersed with wooded areas. Several properties in the immediate area have access to the street by way of long narrow private driveways. The lots immediately surrounding the subject lot meet or exceed the minimum lot area requirement for the R-1-B District.

4. The R-1-B Zoning District permits single family detached dwellings as a matter-of-right. The required minimum lot area is 5,000 square feet and the minimum lot width is 50 feet. The front and rear yards are each to measure 25 feet, and 8-foot side yards are required. This District also permits a maximum lot occupancy of 40 percent and a maximum height of three stories and 40 feet.

5. Presently, the existing property exceeds all requirements except the 25-foot rear yard requirement. The lot area is 8,238 square feet, an average width of 131.62 feet is provided. The front set back measures approximately 25 feet and there are 8-foot side yards. However, the rear yard is only 4.2 feet in length. The dwelling has a foot print of 1,366.78 square feet and it fronts on a 20-foot public alley. A 20-foot public alley is also located to the west and northwest of the site.

6. The applicant proposes to subdivide the lot into two lots of record. The first lot will contain the existing dwelling and will have a lot area of 5,060.70 square feet, a lot occupancy of 1,366.78 square feet, an average size of 131.62 feet, side yards of 8 feet each, a 25-foot front yard and a rear yard of 4.5 feet. The second lot would contain a new two-story dwelling with a frontage on Weaver Terrace. It would have a footprint of 1,240 square feet, a lot area of 3,177.36 square feet, an average width of 66.19 feet, side yards of 9 feet and 15.3 feet, and a rear yard of 17 feet. The front of the house would be located on the property line. One parking space would be provided at each of the sites.

7. The Zoning Regulations require that a lot can be subdivided only if, upon subdivision, each lot meets the various requirements of the Regulations (Sub-section 101.6). Further, each lot is required to have a street frontage (Sub-section 401.6).

8. Because the new lot would fail to meet the minimum lot area and rear yard requirements, the applicant is seeking variances from these provisions of the Zoning Regulations. The applicant also requests a variance to allow a subdivision to create a record lot that does not meet the minimum lot area requirements and a variance to create a record lot without the required street frontage.

9. The applicant testified that the existing dwelling has two bedrooms measuring 9'x10½' and 12'x14' respectively. The second bedroom resulted from an initial expansion of the dwelling in 1982. There is a small den, 8'x8', which cannot reasonably be converted into a third bedroom. The applicants have made major repairs and replacements since purchasing the property in July of 1982. The property, which is about 52 years old, had deteriorated a great deal.

10. The applicant testified that they wish to have another child and they will need more living space. They indicated that their existing house is unique in that the manner in which it is situated on the lot, prevents expansion without the need for relief from the Zoning Regulations. They are unable to add on to the dwelling because it cannot structurally accommodate an additional floor. This, they argue, poses an exceptional hardship on them. The applicants

testify that they are left with the option of subdividing the lot and selling the existing structure to finance the construction of a new dwelling on the second lot.

11. The Office of Planning (OP), by report dated May 16, 1988 and through testimony at the hearing, recommended denial of the requested variances. The OP indicated that the subject lot is irregular in shape because it narrows as it goes back from Weaver Terrace. The OP noted, however, that this characteristic does not make this property unique because there are other oddly shaped lots in the area. The OP is of the opinion that there is no characteristic of the property which creates a practical difficulty that deprives the owners of reasonable use of their property. The lot is already developed with a single-family dwelling thereby providing the owners with reasonable use of the property.

12. The Office of Planning was very concerned that once the property was subdivided, the formerly conforming (except for the rear yard) single lot will be converted into two lots, one of which will conform while the other will be greatly non-conforming. Specifically, the new lot will have an area of only 3,177.36 square feet where 5,000 square feet is required. This would necessitate a lot area variance of 1,822.70 square feet or 36.45 percent. An 8-foot rear yard variance would also be needed. Furthermore, once the property is subdivided, the existing structure and lot will have no street frontage. The new house will front on Weaver Terrace leaving the second lot with only alley frontage. This alley is only 20 feet wide while a 30-foot alley is required. The Office of Planning is of the opinion that the variances needed for the subject application are excessive and therefore, impair the intent, purpose and integrity of the Zoning Regulations and Maps. A denial is therefore, recommended. The Board agrees with the recommendation of the Office of Planning.

13. Advisory Neighborhood Commission (ANC) 3-D, by letter dated April 26, 1988, indicated that the subject application was opposed by a vote of 4 to 1. The ANC feels that the new lot would represent a major variance in lot size, that to place the new house on the lot line of Weaver Terrace would be intrusive and out of character with the neighborhood. The ANC is of the opinion that to grant the variances would encourage others to seek lot subdivisions which would erode the open space character of the neighborhood. The ANC pointed out that the applicants described their property as being in "good condition" indicating to some Commissioners that other options were available, such as modification or addition. At the hearing, the applicants refuted this position, stating that their house is in good condition now after many improvements. However, it is structurally unable to accommodate an addition in any

direction. The Board agrees with the recommendation of the ANC.

14. Three neighbors testified in support of the application. They indicated that the applicant is a good neighbor who takes excellent care of his property. They indicated further that the proposed plans would not have a negative effect on their nearby properties.

15. Six letters of support and a petition containing 26 signatures of supporting neighbors were submitted into the record.

CONCLUSIONS OF LAW AND OPINION

Based on the foregoing Findings of Fact and evidence of record, the Board concludes that the applicant is seeking area variances, a variance to allow a subdivision and a variance to create a record lot without the required street frontage. The granting of a variance requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. The Board further must find that the application will not be of substantial detriment to the public good and will not substantially impair the intent, purpose and integrity of the zone plan.

The Board concludes that the applicants have not met the burden of proof. The Board concludes that, except for the rear yard, the subject property conforms to the Zoning Regulations. Although the lot is unusual in shape, the lot area is significant greater than the minimum required and provides the opportunity to enlarge the existing house. The lot has a generally a mild slope and has no unusual topographic conditions. The Board concludes that it is not unique relative to other properties nearby and it presently conforms to the area and width requirements of the R-1-B District. Therefore, it is the opinion of the Board that there does not exist a unique or exceptional condition of the property which creates a practical difficulty or deprives the owners of reasonable use of their property.


The Board concludes that the variances requested are excessive in light of the fact that the property is at present, virtually in complete conformance with the Zoning Regulations. It is the Board's opinion that the proposed subdivision and construction requires excessive and numerous variances, and would have a negative effect on the layout of properties in the community. These factors lead the Board to conclude that the requested variances cannot be granted without substantial detriment to the public good or substantial impairment to the intent, purpose and integrity of the Zone plan as embodied in the Zoning Regulations and Maps.

The Board concludes that it has afforded the ANC the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 5-0 (William F. McIntosh, Carrie L. Thornhill and Paula L. Jewell to deny; John G. Parsons and Charles R. Norris to deny by proxy).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: AUG 31 1989

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

14798order/BHS8

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 14798

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mail to all parties, dated AUG 31, and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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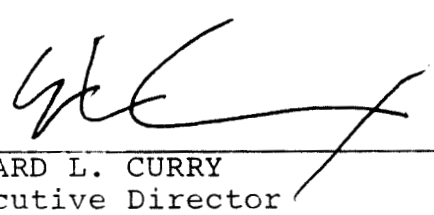
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EDWARD L. CURRY
Executive Director

DATE: AUG 31